

### **E) REMARKS**

This Response is filed in response to the Office Action dated May 16, 2006.

Upon entry of this Amendment, claims 1-12, 14-23 and 25-50 will be pending in the Application. Claims 13 and 24 are canceled.

In the outstanding Office Action, the Examiner subjected claims 1-50 to a restriction requirement under 35 U.S.C. § 121.

#### **Restriction/Election under 35 U.S.C. 121**

The Office Action of May 16, 2006 subjects claims 1-50 of the present Application to a restriction requirement. The Examiner has required restriction to one of the following inventions under 35 U.S.C. § 121:

- I. Claims 20-26 and 48-50, drawn to Methods Of Avoiding Hypoxemia and Creating A Flight Plan, classified in class 128 and 244.
- II. Claims 1-19 and 27-47, drawn to Methods Of Avoiding Hypoxemia and Creating A Flight Plan, classified in class 128 and 244.

In accordance with the requirements of 37 C.F.R. § 1.143, Applicant provisionally elects the invention of Group II with traverse, without prejudice to file divisional application(s).

Applicant respectfully traverses the requirements for restriction and requests reconsideration of the restriction requirement between Groups I and II. Applicant submits that the restriction requirement should be withdrawn, because the Examiner has not shown that any combination of Groups I and II are not both independent and distinct, as the claims must be shown to be "independent and distinct" to maintain the restriction, 35 U.S.C. § 121, 37 C.F.R. § 1.141, MPEP 802. Additionally, it would not be an undue burden on the Examiner to search and examine the inventions, as even multiple art classes/subclasses are routinely searched when applications are examined (see MPEP 803). For example, any search of the methods associated with avoiding hypoxemia and creating a flight plan could be reasonably extended to apparatus

associated with avoiding hypoxemia and creating a flight plan. A thorough search of the art would therefore include such art.

In addition, the Examiner has stated that if Group II is selected, a further required restriction is imposed to one of the following inventions under 35 U.S.C. § 121:

II-A. Claims 28-47, drawn to Apparatuses For Calculating A Flight Plan, classified in class 244, subclass 118.5.

II-B. Claims 1-19, drawn to Apparatuses For Avoiding Hypoxemia, classified in class 128, subclass 204.23.

Applicant believes that the Examiner intended for Group II-B to additionally contain claim 27, thus, Applicant will assume that Group II-B comprises claims 1-19 and 27.

In accordance with the requirements of 37 C.F.R. § 1.143, Applicant provisionally elects the invention of Group II-A with traverse, without prejudice to file divisional application(s).

Applicant respectfully traverses the requirements for restriction and requests reconsideration of the restriction requirement between Groups II-A and II-B. Applicant submits that the restriction requirement should be withdrawn, because the Examiner has not shown that any combination of Groups II-A and II-B are not both independent and distinct, as previously discussed.

### **CONCLUSION**

In summary, it is respectfully submitted that for the reasons given above the restriction requirement between the inventions as set forth in claims 1-12, 14-23 and 25-50 (Groups I, I-A, I-B, II, II-A and II-B) should be examined and the restriction requirement reconsidered and withdrawn by the Examiner. Further, it is respectfully submitted that claims 1-12, 14-23 and 25-50 are novel defining patentable subject matter and should be allowed. A favorable action is earnestly solicited.

The Commissioner is hereby authorized to charge any additional fees and credit any overpayments to Deposit Account No. 50-1059.

Respectfully submitted,

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